IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1350 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI RANCHHODBHAI RATHOD

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 1350 of 1993

MR US BRAHMBHATT for the appellant

Ms. B.R. Gajjar, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 04/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant, by filing this appeal under Section 374(2) of the Code of Criminal Procedure ('Code' for short), has challenged the conviction under Sections 302 and 498-A of the Indian Penal Code ('IPC' for short) and the sentence imposed on him for R.I. for life and fine of Rs.500 recorded by the learned Sessions Judge, Valsad, at Navsari, vide judgment and order dated October 25, 1993, in Sessions Case No.39 of 1993.

2. The appellant was married with Kusumben (deceased) prior to three years of the date of incident which took place on December 2, 1992. It is the prosecution case that Kusumben could not give birth to a child and, therefore, the appellant had treated her with cruelty, due to which, Kusumben often went to her parents' house which was situated near the place of the house of the appellant. Prior to one week of the incident, a quarrel had taken place between the appellant and Kusumben with the result Kusumben had gone to reside at her parents' house. On December 2, 1992, at about 21 hrs, P.W.1, Meenaben Bhikhabhai, the sister of deceased Kusumben, was sitting outside the house of her father. Her father, P.W.6, Bhikhabhai Kalyanbhai, and his wife were taking dinner inside the house. Kusumben came outside the house to throw water and at that time the appellant had quarrelled with her as she was not returning to her matrimonial house. The appellant got enraged and inflicted a knife blow on the chest portion of deceased Kusumben which pierced through the lungs and heart, with the result, she fell down. P.W.1, Meenaben Bhikhabhai, had raised shouts and, therefore, Sureshbhai Bachhubhai, Kamleshbhai and others had rushed to the place of the incident. The appellant after inflicting the knife blow on deceased Kusumben had tried to run away, but Sureshbhai and Kamleshbhai had chased him and caught hold of him. The appellant was brought near the place of the incident along with the knife which he was carrying and with which he had inflicted the knife blow on the chest of deceased Kusumben. Deceased Kusumben was taken to Parsi General Hospital in an auto-rickshaw, but the Doctor on duty at the hospital had declared her dead. P.W.1, Meenaben Bhikhabhai, had lodged First Information Report against the appellant for causing murder of her sister, Kusumben, which was recorded by the P.W.7, Police Jamadar, Rayjibhai Manabhai, who was at the relevant time serving as Police Station Officer incharge of Navsari City Police Station. The First Information Report lodged by P.W.1, Meenaben Bhikhabhai, was registered as CR No.I-132 of 1992 against the appellant for the offences under Sections 302 and 498-A of the IPC and under Section 135 of the Bombay Police Act. The investigation of the

above crime was carried out by the Police Inspector, P.W.8, Chimanbhai Sablaji Gameti. P.W.8, PI, Gameti, held inquest of the dead body of deceased Kusumben and sent it for autopsy to the Civil Hospital, Navsari. P.W.5, Dr. Ushaben Ajay Sharma, had performed post-mortem of the dead body of deceased Kusumben on December 3, 1992 between 10.45 a.m. and 11.45 a.m. P.W.8, PI, Gameti, had drawn panchanama of scene of offence in the presence of two independent panchas and had collected the blood soiled earth and blood stained muddamal knife from the place of the incident. The statements of the witnesses who were residing near the place of the incident were recorded. The appellant was presented before P.W.8, PI, Gameti, at 11.30 hrs on December 3, 1992 and he was arrested and the clothes, which were blood-stained, and which were put on by the appellant at the time of the incident, were seized under a panchanama. The clothes put on by deceased Kusumben were also seized under a panchanama. On December 4, 1992, all the incriminating articles were sent to the Forensic Science Laboratory ('FSL' for short) for analysis. Further investigation of the crime was handed over by P.W.8, PI, Gameti to PSI Zala, who, on completion of the investigation, and after receiving report from the FSL, filed chargesheet against the appellant for the offences under Sections 302 and 498-A of the Indian Penal Code and under Section 135 of the Bombay Police Act in the Court of the learned Chief Judicial Magistrate, Navsari, which was registered as Criminal Case No.1950 of 1993. As the offence under Section 302 IPC is exclusively triable by the Court of Sessions Judge, the learned Chief Judicial Magistrate, Navsari, committed the case to the Court of Sessions, Valsad, at Navsari, by order dated April 12, 1993. The said case on transfer to the Court of Sessions Judge, Valsad, at Navsari, came to be registered as Sessions Case No.39 of 1993.

3. Charge Exh.1 was framed against the appellant for the offences under Sections 302 and 498-A of the Indian Penal Code and under Section 135 of the Bombay Police Act. The appellant has pleaded not guilty and claimed to be tried. The prosecution in order to prove the charges framed against the appellant examined (1) P.W.1, Meenaben Bhikhabhai (complainant), Exh.6; (2) P.W.2, Circle Inspector, Kiranbhai Chhaganlal Desai, Exh.7; (3) P.W.3 panch witness, Ramanbhai Naginbhai, Exh.9; (4) P.W.4, Sureshkumar Bachhubhai Dhodiya Patel, Exh.14; (5) P.W.5, Dr. Ushaben Ajaysharma, Medical Officer of the Civil Hospital, Navsari, Exh.15; (6) P.W.6, Bhikhabhai Kalyanbhai, father of deceased Kusumben, Exh.17; (7) P.W.7, Police Zamadar, Rayjibhai Manabhai, Exh.18; and

(8) P.W.8, IO, PI, Chimanbhai Sablaji Gameti, Exh.20. The prosecution produced documentary evidence such as map of scene of offence Exh.8, panchanama of scene of offence Exh.10, inquest panchanama Exh.11, panchanama of seizure of clothes of deceased Kusumben Exh.12, panchanama of seizure of clothes of the appellant Exh.13, post-mortem notes Exh.16, First Information Report Exh.19, and the report of the FSL Exh.22. After the evidence of the prosecution was over, the appellant was questioned and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial. The appellant had not led any evidence in defence.

4. The learned Sessions Judge, on appreciation of oral as well as documentary evidence, and the arguments advanced by the learned advocates for the parties, concluded that the prosecution had proved that the appellant had treated deceased Kusumben with cruelty; deceased Kusumben died homicidal death; the appellant by inflicting injuries with the knife on her chest had caused her death; the injuries inflicted by the appellant on the chest of the deceased were sufficient in the ordinary course of nature to cause death; and the appellant committed breach of notification issued by the District Magistrate, District Valsad under Section 37(1) of the Bombay Police Act by keeping the prohibited knife in his possession. On the basis of the abovereferred to conclusions, the learned Sessions Judge convicted the appellant under Sections 302 and 498-A of the Indian Penal Code and under Section 135 of the Bombay Police Act, and imposed the sentence of R.I. for life and fine of Rs.500. However, no separate sentences were imposed on the appellant either under Section 498-A of the IPC or under Section 135 of the Bombay Police Act. The appellant has filed the present appeal challenging the aforesaid conviction and sentence.

5. Learned advocate, Mr. U.S. Brahmbhatt, for the appellant and learned APP, Ms. B.R. Gajjar, have taken us through the entire record and proceedings of the appeal.

6. Learned advocate for the appellant has vehemently submitted that the appellant, who happens to be the son-in-law of P.W.6, Bhikhabhai Kalyanbhai, was present at the house of his father-in-law and he was falsely implicated with the murder of his wife. It is submitted that the prosecution had not examined any independent witness to connect the appellant with the murder of deceased Kusumben. The evidence led by the prosecution

was of highly interested and related witnesses and there were contradictions and inconsistencies between the First Information Report and the oral testimony of P.W.1, Meenaben Bhikhabhai, who is the sister of deceased Kusumben. Learned advocate for the appellant has further submitted that discovery of muddamal knife at the place of the incident was also doubtful. In the alternative, the learned advocate for the appellant has submitted that the appellant had inflicted only one blow with the muddamal knife on deceased Kusumben in grave and sudden provocation and, therefore, the offence committed by the appellant would fall under Section 304 Part II of the Indian Penal Code and, therefore, the conviction and the sentence be modified accordingly.

7. Learned APP, Ms. B.R. Gajjar, has, on the other hand, has submitted that the prosecution had led cogent and convincing evidence with regard to the involvement of the appellant with the commission of crime in question. That, the evidence of P.W. 1, Meenaben Bhikhabhai, was fully corroborated by the evidence of P.W.4, Sureshkumar Bachhubhai, and P.W.6, Bhikhbahi Kalyanbhai. It is submitted that the appellant was caught hold near the place of incident with the muddamal knife which was blood stained. It is further submitted that the oral testimony of P.W.1, Meenaben Bhikhabhai, was fully corroborated by the other pieces of evidence, namely, blood stained clothes which were found on the person of the appellant and the report of the FSL Exh.22 which showed that the blood which was found on the clothes of the appellant was of the blood group of deceased Kusumben. Learned APP has further submitted that the presence of P.W.1, Meenaben Bhikhabhai, at the place of incident, was natural, in view of the fact that she had come to her father's home as she was pregnant. Learned APP has further submitted P.W.1, Meenaben, being the sister of deceased Kusumben, would not involve falsely the appellant as a culprit who is her brother in law. Learned APP has further submitted that the appellant had acted cruelly and selected the vital part of the body of deceased Kusumben for inflicting the knife blow which had cut the ribs and pierced through her lungs and heart, and had caused the murder of deceased Kusumben and, therefore, the offence committed by the appellant would squarely fall within the purview of Section 302 of the Indian Penal Code and, therefore, the appeal be dismissed and the conviction and the sentence be confirmed.

8. The oral testimony of P.W.5, Dr. Ushaben Ajaysharma, shows that the deceased had sustained fatal injuries on the middle of the chest and the injuries

inflicted on the middle line of the chest was so severe that it had cut 4th and 5th ribs and pierced through the lungs. The post-mortem notes produced at Exh.16 also corroborated the oral testimony of P.W.5, Dr. Ushaben Ajaysharma. In the post-mortem notes, the cause of death was shown as 'shock due to injuries vital part of body i.e. heart and lung'. In our opinion, the prosecution had proved beyond doubt that deceased Kusumben had died homicidal death and, therefore, the finding of the learned Sessions judge in that respect deserves to be confirmed.

9. The evidence of eye-witness, P.W.1, Meenaben Bhikhabhai, indicates that, on December 2, 1992, around 9 p.m. she was sitting on the otla outside the house of her father, P.W.6, Bhikhabhai. At that time, the appellant had come to the house of her father. Deceased Kusumben, in the meantime, had come from the house just to throw water and at that time the appellant had inflicted the knife blow on the chest of Kusumben. She categorically deposed that the appellant was at a distance of six feet from the place where she was sitting. She deposed that, near the house, there was one street light and there was sufficient light at the place of the incident to identify the appellant. It be stated that this is not the case of mistaken identity because the appellant was known to P.W.1, Meenaben Bhikhabhai, as he is the brother-in-law of the witness. As per the evidence of P.W.1, Meenaben Bhikhabhai, after inflicting the knife blow on deceased Kusumben, the appellant had run away with the knife. Due to raising of shouts by P.W.1, Meenaben Bhikhabhai, P.W.4, Sureshkumar Bachhubhai, who was residing in the nearby house, had come at the place of the incident. P.W.4, Sureshkumar Bachhubhai, had seen the appellant running away after inflicting the knife blow and, therefore, he had chased him and caught hold of him. The evidence of P.W.1, Meenaben Bhikhabhai, gets fully corroborated by the evidence of P.W.4, Sureshkumar Bachhubhai. Both the witnesses have deposed that the appellant was caught red-handed and when he was apprehended he was carrying the muddamal knife which was blood stained. The evidence of P.W.4, Sureshkumar Bachhubhai, also indicates that the clothes put on by the appellant were also blood stained. The oral testimony of P.W.1, Meenaben Bhikhabhai, and P.W.4, Sureshkumar Bachhubhai, makes it abundantly clear that deceased Kusumben had, due to infliction of knife injury on her chest by the appellant, fallen down and succumbed to death then and there. When deceased Kusumben was removed to Parsi General Hospital, at Navsari, in an auto-rickshaw owned by one Ramzan. On

reaching the hospital, the Doctor on duty had declared her dead.

10. In our view, the oral testimony of P.W.1, Meenaben Bhikhabhai, P.W.4, Sureshkumar Bachhubhai and P.W.6, Bhikhabhai Kalyanbhai, proves beyond doubt that the appellant had inflicted fatal knife blow on the middle of the chest of deceased Kusumben who had caused her death. It may be stated that the appellant had selected vital part of the body of deceased Kusumben for inflicting the knife blow. The appellant had acted cruelly in inflicting the knife blow. The force which the appellant had applied was such that the knife had pierced through the ribs and cut the lungs. There cannot be any manner of doubt that the appellant had the intention to cause the murder of deceased Kusumben and, therefore, the act of the appellant would squarely fall with the definition of murder under Section 300 of the Indian Penal Code. The submission of the learned advocate for the appellant that the appellant had acted because of grave and sudden provocation and had inflicted only one blow and, therefore, the offence would fall under Section 304 Part II of the Indian Penal Code deserves to be rejected. The appellant had come to the place of the incident duly armed with the knife with a sole intention to commit the murder of deceased Kusumben. Deceased Kusumben had not given any provocation to the appellant to act in a cruel manner. The manner in which the incident had taken place suggested that the appellant had come with full knowledge and intention to cause murder of deceased Kusumben. Therefore, the case of the appellant would not fall under Section 304 Part II of the Indian Penal Code and the finding of the learned Sessions Judge that the appellant had committed offence under Section 302 of the Indian Penal Code deserves to be confirmed.

11. The evidence of P.W.1, Meenaben Bhikhabhai, and P.W.6, Bhikhabhai Kalyanbhai, proves beyond doubt that the appellant was treating deceased Kusumben with cruelty as she could not bear a child. Due to ill-treatment meted out by the appellant, Kusumben used to come to the parental home and was complaining about the ill-treatment meted out to her by the appellant. The evidence of P.W.6, Bhikhabhai Kalyanbhai, has gone unchallenged during the cross examination also. The fact remains that the appellant was ill-treating deceased Kusumben. Therefore, we are of the view that the learned Sessions Judge has not committed any error in holding that, as the appellant had ill-treated deceased Kusumben, the offence under Section 498-A of the Indian Penal Code was proved

beyond doubt.

12. As a result of foregoing reasons, the appeal fails and is dismissed. The conviction under Sections 302 and 498-A of the Indian Penal Code ('IPC' for short) and the sentence imposed on the appellant for R.I. for life and fine of Rs.500 by the learned Sessions Judge, Valsad, at Navsari, vide judgment and order dated October 25, 1993, in Sessions Case No.39 of 1993, is confirmed. The muddamal be destroyed in terms of the directions given in the impugned judgment.

(M.H. Kadri, J.)

(H.H. Mehta, J.)
(swamy)